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Folder Title: 08/10/1987 H.R. 27 (1 of 4)
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THE WHITE HOUSE
WASHINGTON

August 10, 1987

MR. PRESIDENT:

Attached for your approval is enrolled bill H.R. 27, the Competitive Equality Banking Act of 1987.

Approval of the bill is recommended by OMB, the Treasury Department, and the Offices of Legislative Affairs, Policy Development, Intergovernmental Affairs, and Cabinet Affairs. Counsel's Office and CEA have no objection.

Rhett Dawson

LAST DAY FOR ACTION: August 19th

President has seen 8/10

Statement issued 8/10/87 Private Ceremony Oval Office 3 PM

APPROVED AUG 10 1987

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Received SS 1987 AUG -6 PM 5:56

6 AUG 1987

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 27 - Competitive Equality Banking Act of 1987
Sponsors - Reps. St Germain (D) Rhode Island and Wylie (R) Ohio

Last Day for Action

Purposes

To (1) recapitalize the Federal Savings and Loan Insurance Corporation; (2) close the "non-bank bank loophole;" (3) impose a moratorium on banks offering new products and services; (4) provide Federal financial regulatory agencies with additional tools with which to assist troubled banks and thrift institutions; (5) exempt the Federal financial regulatory agencies from Presidential oversight through the apportionment process; and (6) make many other banking-related changes.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval (Signing statement attached)
Council of Economic Advisers	No objection
Department of Justice	Defers (Signing statement language attached)

Discussion

Enactment of H.R. 27 will result in an infusion of much-needed capital -- $10.825 billion -- into the Federal Savings and Loan Insurance Corporation (FSLIC), the agency that insures deposits at most of the Nation's thrift institutions (i.e., "savings and loans"). As such, it will be a major step in ensuring that FSLIC has the resources it needs in the years ahead both to assist failing (or failed) thrifts and to protect customers' deposits. An adequate recapitalization of FSLIC has been, and remains, an important policy objective of the Administration.

In May 1986, the Administration proposed a "self-help" plan to recapitalize FSLIC at $15 billion over five years without the use of taxpayers' funds. In 1987, the House passed a $5 billion FSLIC recapitalization bill, which also included objectionable statutory forbearance provisions. The Senate passed a $7.5 billion measure; however, the Senate bill included many other banking-related provisions that were not germane to the FSLIC recapitalization. The Administration supported some of the Senate provisions, vigorously opposed others, and consistently threatened a veto of both the House and Senate bills if the Administration's primary concerns -- insufficient FSLIC recapitalization, restrictive statutory forbearance requirements, anti-competitive banking provisions, and exemption from Presidential oversight/apportionment authority for the Federal banking regulatory agencies -- were not adequately addressed.

The conferees on the enrolled bill initially agreed to an $8.5 billion recapitalization of FSLIC, as well as most of the other provisions in the Senate bill. As a result of repeated warnings by Treasury Secretary Baker that the measure reported by the conference committee remained seriously deficient (and subject to a veto), the conferees agreed to reopen the conference report and to accept a compromise devised by the Secretary. On July 29th, Secretary Baker advised the conferees by letter that you had agreed to accept the compromise, and the legislation was subsequently enrolled. As enrolled, H.R. 27 still contains objectionable provisions, but that is the nature of compromise and is to be expected. As a consequence, I join the Department of the Treasury in recommending approval of the enrolled bill.

Background

Federal deposit insurance (administered by FSLIC for thrift institutions and by the Federal Deposit Insurance Corporation (FDIC) for banks) has provided a large measure of stability for the Nation's financial system. FSLIC is in urgent need of additional funds, however. For several years, the Federal Home Loan Bank Board (FHLBB), which supervises FSLIC, has delayed liquidating or finding merger partners for institutions with capital adequacy problems. Instead, FSLIC has relaxed accounting standards, engaged in implicit regulatory forbearance, and provided artificial forms of capital to troubled thrifts to keep them afloat.

Despite these steps, the number of institutions with serious problems (i.e., net worth of zero or less) has increased sharply, from 16 in 1980 to 445 in September 1986, with $112.7 billion in insured assets. The Chairman of the FHLBB has estimated that at one time the cost of resolving the thrift industry's known problems was as much as $23.5 billion, far more than FSLIC -- which finances its insurance fund through assessments on member institutions, not by direct appropriations -- had available to it (or has available to it now).

In a word, FSLIC is insolvent; the General Accounting Office has estimated that as of December 31, 1986, FSLIC had negative primary reserves of approximately $6 billion. It is widely feared that failure to provide FSLIC with adequate resources may result in a tremendous loss of consumer confidence in the thrift industry (with attendant debilitating withdrawals), a multi-billion dollar taxpayer bailout of insolvent thrifts, or the collapse of the thrift industry altogether.

H.R. 27 represents a congressional response to the Administration's proposal to provide an adequate capitalization for FSLIC. The Administration sought significantly higher funding levels and a "clean" FSLIC recapitalization bill; however, as noted previously, the Congress has passed a measure that goes far beyond recapitalization of FSLIC. A summary of the enrolled bill follows.

Description of the Enrolled Bill

H.R. 27 consists of 12 titles, each of which is summarized and, where appropriate, discussed below.

Title I - Competitive Equality Amendments of 1987

Title I would make a number of changes in the banking statutes, the most important of which by far is the closing of the "non-bank bank loophole," which has allowed certain financial institutions to avoid Federal regulation otherwise applicable to banks. Key provisions would:

- Amend the Bank Holding Company Act to redefine "bank" as an institution that either makes commercial loans and accepts demand deposits or is insured by the FDIC;
- Maintain current exclusions from the definition of "bank" for institutions insured by FSLIC and federally-chartered State thrift institutions and establish limited new exclusions (i.e., for credit unions, credit card banks, industrial banks, and similar institutions);
- "Grandfather" non-bank banks acquired before March 6, 1987;
- Impose restrictions on the activities of grandfathered non-bank banks (e.g., by limiting their growth to no more than seven percent per year and by prohibiting the cross-marketing of products between a non-bank bank and its non-bank affiliate);
- Permit any entity, including a holding company that owns a non-bank bank, to purchase a failing thrift institution with more than $500 million in assets;

- o Remove the application of Glass-Steagall Act restrictions from purchasers of failing thrifts with over $500 million in assets;

- o Temporarily (through March 1, 1988), and for the first time, extend Glass-Steagall restrictions on securities activities to State-chartered, non-member banks; and

- o Make other amendments to promote "competitive equality" (e.g., by making the authority of national banks to lease certain property comparable to the authority of savings and loans).

The Administration strongly opposed closing the "non-bank bank loophole" because such restrictions are anti-competitive and raise serious questions of equity. Far from establishing the "level playing field" in the financial services industry that the Administration has long sought, the non-bank bank provisions of H.R. 27 are a major and unfortunate step in precisely the opposite direction. Although title I of the enrolled bill is an improvement over earlier versions (e.g., by permitting holding companies that own non-bank banks to purchase failing thrifts in certain instances), it remains objectionable.

<u>Title II - Moratorium on Certain Non-Banking Activities</u>

Title II would impose a moratorium on banks engaging in certain securities, insurance and real estate activities by prohibiting Federal banking agencies from authorizing activities of this kind. Other provisions would:

- o Make the moratorium retroactive to March 6, 1987, and terminate it on March 1, 1988;

- o Call upon the Banking Committees of the Senate and the House of Representatives to conduct a comprehensive review of the Nation's banking laws and to "make decisions on the need for financial restructuring legislation in light of today's changing financial environment . . . before the expiration of such moratorium;"

- o State that it is the intent of Congress not to renew the moratorium, whether or not subsequent banking legislation is passed by the Congress; and

- o Clarify that nothing in the enrolled bill is to be construed as interfering with the States' authority to permit State-chartered institutions from engaging in insurance activities.

Title II of H.R. 27 is also objectionable. As a matter of efficient functioning of financial services markets, regulated financial institutions should be permitted to engage in activities that are currently closed to them and, thus, compete

more effectively with unregulated firms engaging in similar activities without restriction. In 1983, for example, the Administration proposed comprehensive legislation that would have largely deregulated the non-banking activities of bank and thrift holding companies (e.g., by permitting insurance underwriting and brokering).

By restricting, instead of expanding, the activities in which depository institutions may permissibly engage, title II of the enrolled bill is contrary to Administration policy. I note, however, the congressional declarations of intent to address this issue more directly during the coming year and not to extend the moratorium beyond its scheduled expiration.

Title III - FSLIC Recapitalization

Title III of H.R. 27 would recapitalize FSLIC by providing $10.825 billion, with a $3.75 billion annual borrowing "cap." Of this amount, $.825 billion would not be additional capital for FSLIC. It would, instead, be used to offset the loss of FSLIC premium income, which was used to restore FSLIC's secondary reserve. Key provisions of title III would:

- Require the Federal Home Loan Banks to invest in a newly-created "Financing Corporation," which would be managed by a directorate consisting of the Director of the Office of Finance of the FHLBB and two members selected by the FHLBB from among the presidents of the Federal Home Loan Banks;

- Require the Corporation, in turn, to invest in long-term United States Treasury zero coupon bonds;

- Require the Corporation at the same time to issue long-term bonds, the proceeds of which would be "invested" (i.e., turned over to) FSLIC and used as necessary to assist troubled thrifts;

- Require that the Financing Corporation's transactions be timed in such a way so that the zero coupon bonds that the Corporation purchases will mature at the same time that the Corporation is obligated to pay off the principal on its long-term bonds;

- Direct the Corporation and the FHLBB to ensure that minority-owned investment firms are afforded ample opportunity to participate in any public bond offerings;

- Permit the Corporation to impose assessments on FSLIC-insured institutions;

- o Impose an "exit fee" on an institution that ceases to be insured by FSLIC equal to twice the institution's annual premium paid to FSLIC plus twice its FSLIC special assessment (a temporary fee currently imposed to augment FSLIC's income); and

- o Impose a one-year moratorium, from the date of enactment of H.R. 27, during which no institution may leave FSLIC voluntarily.

As noted at the outset, the FSLIC recapitalization plan contained in the enrolled bill is based in large measure on a Department of the Treasury proposal. The Administration's proposal differed in one crucial respect, however, by providing $15 billion for FSLIC. It was, and remains, our view that that amount -- not $10.825 billion ($10 billion net), as contained in title III -- is the minimum needed to see FSLIC through the difficult times ahead.

The conferees on this legislation did make a major concession with respect to the level of funding for FSLIC. In particular, as passed by the House, H.R. 27 would have provided only $5 billion for FSLIC, while the Senate would have authorized $7.5 billion. The conferees initially agreed to $8.5 billion; they later agreed to increase that figure to $10.825 billion.

The Department of Justice has provided language (attached) for inclusion in any signing statement issued in connection with the enrolled bill expressing concern about the constitutionality of the manner in which the directorate of the Financing Corporation would be appointed under title III. In particular, Justice believes that in restricting two of the three seats on the directorate to a list of the twelve presidents of the Federal Home Loan Banks, the enrolled bill would impose "an impermissibly narrow restriction on the executive's constitutional duty and authority to select suitable officers of the United States." Justice also wishes to clarify that in exercising its authority to sue and be sued, the Financing Corporation would rely on the litigating resources of the Department of Justice.

Title IV - Thrift Industry Recovery Provisions

Title IV would establish a regulatory forbearance program for troubled but "well managed" thrifts in areas of the country with weakened economies (e.g., because of downturns in the energy or agricultural markets). According to the conference report on H.R. 27, the purpose of this title is to ensure the health of the thrift industry at the lowest cost to FSLIC. Other key provisions of title IV would:

- o Authorize the FHLBB to purchase capital certificates from institutions participating in the forbearance program to prop up their net worth;

- o Require the FHLBB to promulgate thrift accounting standards consistent with Generally Accepted Accounting Principles;
- o Establish an appeals process for the timely review of grievances related to the determination of appraisals, asset classifications, loss allowances, and the like;
- o Require the use of new appraisal standards for thrifts, consistent with standards employed by commercial banks;
- o Provide FSLIC with the same authority held by the bank regulators with respect to minimum capital requirements;
- o Terminate the regulatory forbearance program when the FSLIC Financing Corporation borrows the last of the $10.825 billion authorized by title III of the enrolled bill (which will not occur for at least two and one-half years).

The Administration has consistently opposed proposals to impose rigid statutory limitations on the ability of the regulators to supervise and resolve problems involving troubled thrift institutions. We have supported regulatory forbearance by the regulators for well-managed institutions that are able to demonstrate reasonable prospects for working out their problems. While still undesirable, title IV of H.R. 27 is an improvement over earlier versions. For example, it is not open-ended (i.e., it will "sunset" when the Financing Corporation has completed its borrowing), and FSLIC is given important new authority with respect to capital requirements.

Title V - Financial Institutions Emergency Acquisitions

Title V would enhance the ability of the regulatory agencies to assist troubled banks and thrifts. Title V would:

- o Permit the interstate acquisition of failing, as well as failed banks with assets of at least $500 million;
- o Authorize the establishment of "bridge banks" to enable the FDIC to bridge the gap between the failure of a bank and a satisfactory purchase or assumption;
- o Extend title I (FDIC/FHLBB/National Credit Union Administration conservatorship authorities) of the Garn-St Germain Depository Institutions Act of 1982 permanently and title II (net worth certificates) for five years; and
- o Exempt the financial institutions regulatory agencies from sequestration under the Gramm-Rudman-Hollings deficit reduction legislation.

The Administration has generally supported these provisions as a useful way for the regulators to help troubled institutions.

Title V would also exempt the regulatory agencies from Presidential apportionment authority, however, which is highly objectionable. Apportionment of funds is a critical management tool for the Executive branch in ensuring financial accountability to the President; exemptions from apportionment seriously erode the President's managerial discretion and authority. Moreover, given the significant possibility that FSLIC will require additional funds at some future date to solve the thrift problem -- and that there will likely be pressure for taxpayers and industry to contribute the second time around -- this loss of accountability is especially serious. For those reasons, I would have recommended disapproval of title V of H.R. 27, had it been presented for your consideration as a separate bill.

Title VI - Expedited Funds Availability

Title VI addresses the problem of "check holds," a practice employed by financial institutions that denies customers access to their deposited funds for specified periods after deposits are made, ostensibly to ensure that deposited items are not subsequently returned for non-sufficient funds. In particular, title VI would:

- Establish an interim funds availability schedule, effective one year after enactment of H.R. 27, that would permit check holds of two days for local checks and six days for non-local checks;

- Establish a permanent funds availability schedule, to be implemented within three years of enactment, that would permit check holds of one day for local checks and four days for non-local checks;

- Provide depository institutions with certain safeguards (e.g., through an exception from the funds availability schedule for new accounts) and make special provision for deposits at automated teller machines; and

- Require depository institutions to disclose their funds availability policies to customers.

Title VI is viewed by some as one of the most important "consumer protection" proposals to pass the Congress in many years. The Administration has in the past generally not objected to mandatory disclosure of check hold policies as a way of ensuring that consumers have the information they need to make informed choices. We have opposed mandatory check hold schedules, however. In our view, the Federal Reserve possesses adequate regulatory authority to address this issue. Moreover, we have expressed concern that any statutory check hold schedule will be unduly rigid. Title VI of H.R. 27, however, appears to have sufficient safeguards built into it -- principally adequate

lead-in time before full implementation -- to permit compliance by covered institutions on a timely basis.

Title VII - Credit Union Amendments

Title VII consists of a series of minor amendments, none of which are objectionable, that would assist the National Credit Union Administration (NCUA) in the supervision of credit unions. For example, the NCUA would be permitted to impose a conservatorship on a credit union when it determines that there has been a willful violation of a cease-and-desist order which has become final or when there is a deliberate concealment of documents from an NCUA examiner.

Title VIII - Loan Loss Amortization

Title VIII would permit the bank regulatory agencies to permit any agricultural bank they supervise to amortize any loss on any qualified agricultural loan over a seven-year period, rather than to write the loss off immediately. In order to take advantage of this liberal amortization authority, the bank would have to submit a plan (which would have to be approved) to its regulatory agency for the restoration of the institution's capital within the seven-year amortization period.

As indicated in the discussion of title IV, the Administration generally opposes regulatory forbearance proposals, of which title VIII is another example. Title VIII is an improvement in two respects on similar provisions contained in the Senate's version of H.R. 27, however. First, the loan loss amortization period is limited to seven instead of ten years. Second, qualifying banks, would, as noted above, be required to submit plans for restoring their capital in order to take advantage of the amortization provisions.

Title IX - Full Faith and Credit

Title IX of H.R. 27 states, in part, that it is the "sense of the Congress that it should reaffirm that deposits up to the statutorily prescribed amount in federally insured depository institutions are backed by the full faith and credit of the United States." This statement is essentially hortatory and restates what most people already believe (viz., that the Government will make whole all depositors in federally-insured institutions, notwithstanding the funds available to FSLIC and FDIC, at least up to the statutory maximum, currently $100,000 per account).

Title X - Government Checks

Title X would do two things. First, it would require the General Accounting Office to conduct a study of the extent to which persons who receive Treasury checks have difficulty cashing

them. Second, it would establish a system for the orderly payment of Treasury checks by:

- o Requiring that a Treasury check be negotiated within one year of its issuance, after which the check is cancelled;

- o Reducing from six years to one year the time during which the Federal Government may recover amounts from financial institutions paid on fraudulently endorsed Treasury checks; and

- o Clarify that the cancellation of a Treasury check does not extinguish the right of the payee to the underlying obligation.

The provisions of title X concerning the orderly payment of Treasury checks are based on a legislative proposal of the Department of the Treasury that is part of the Administration's Management Legislation Program for 1987.

Title XI - Interest to Certain Depositors

Title XI would require the FDIC to pay interest to holders of "yellow certificates of deposit" issued by the former Golden Pacific National Bank of New York. According to the debate in the House, depositors in this institution had to wait 16 months after the FDIC closed it before they were paid off; title XI would compensate them for the loss of the use of their funds during this period.

Title XII - Miscellaneous Provisions

Title XII would make a number of minor, miscellaneous amendments. For example, adjustable rate mortgages (including home equity loans) would be required to include a limitation on the maximum rate of interest applicable to the loan. No limitation would be imposed on how high or low such a "cap" could be, however.

Conclusion and Recommendation

The enrolled bill is consistent with the agreement reached by Secretary Baker with the conferees, which you approved. For that reason, I join the Secretary in recommending approval of H.R. 27. The Department of the Treasury has prepared a signing statement (attached) for your consideration which addresses both the positive and objectionable features of the enrolled bill.

James C. Miller III
Director

STATEMENT BY THE PRESIDENT

I am today signing H.R. 27, the "Competitive Equality Banking Act of 1987," which recapitalizes the Federal Savings and Loan Insurance Corporation (FSLIC) and makes a number of other changes in the Federal regulation of banking.

From the outset, our guiding principle in working with the Congress on this bill has been to avoid a taxpayer bailout -- as was the case in both Ohio and Maryland -- for an industry that has the wherewithal to help itself. This legislation vindicates that principle. The Congress is clearly on notice that industry resources are to be relied upon to finance the FSLIC operations, now and in the future.

I am signing this bill with the understanding that all of the provisions in Titles III and IV are to be viewed collectively as working to protect both depositors and the insurance fund itself. For example, provisions relating to exit fees and the moratorium on leaving the FSLIC should not be interpreted in such a way as to undermine the FSLIC's rebuilding efforts.

Unfortunately, while certain provisions of the bill should help the FSLIC sell large failing savings and loans to a variety of companies and draw needed capital to the industry, other provisions of Title I may still handicap the FSLIC's ability to find purchasers for savings and loans in financial trouble. Counterproductive restrictions should not be imposed on potential acquirers of ailing savings and loans at a time when the FSLIC needs to attract new sources of private capital to offset its limited resources. I urge the Congress to revisit this issue now that the development of comprehensive financial reform is at the top of the legislative agenda.

I am also opposed to the several extraneous, protectionist provisions that were added to this legislation. These provisions will deny consumers the services of new limited-purpose banks. They will also place significant operating

restrictions on recent acquirers of limited-purpose banks, and impose a retrogressive moratorium on the ability of Federal bank regulators to authorize new real estate, securities, and insurance products and services to consumers until March 1, 1988. My willingness to sign this bill is based in part upon its statement of congressional intent not to renew or extend the moratorium on the granting of needed new authorities for banks beyond March 1, 1988, whether or not subsequent legislation is passed by the Congress. It is also my clear understanding that this legislation will not impede the ability of Federal banking agencies to authorize banks and bank holding companies to conduct banking activities permitted under current law.

Certain other provisions of this legislation stand in the way of promoting competition, lowering costs, and increasing efficiencies in the delivery of financial services. While it is entirely appropriate to safeguard against conflicts of interest and to require arms-length transactions among affiliates, restrictions on the merchandising of consumer services and artificial limits on economic growth are unwarranted. These new anti-consumer and anti-competitive provisions could hold back a vital service industry at a time when competition in the international capital markets increasingly challenges United States financial institutions, and they should be repealed.

Section 505 of this legislation exempts the Federal financial regulatory agencies from the apportionment requirements of the Antideficiency Act. The apportionment authority is, however, a critical tool assuring that all Executive branch agencies remain accountable to the President for their financial operations. I am signing this legislation with the firm understanding that notwithstanding the

provisions of Section 505, the President retains his inherent supervisory authority under Article II of the Constitution to ensure that all Executive branch agencies are spending appropriated funds in accordance with law.

Section 103 of the legislation temporarily extends the 1933 Glass-Steagall Act restrictions on securities activities to State-chartered, nonmember banks for the first time, without any showing of public benefit. I note that this intrusion upon the long-standing authority of States to determine the proper activities for financial institutions under their supervision is inconsistent with other provisions of the bill, such as Section 201(e) upholding State authority to regulate the insurance activities of State-chartered banks.

This legislation, while accomplishing the necessary recapitalization of the FSLIC without increasing the budget deficit, goes well beyond that central purpose and raises a number of issues that require further congressional attention. I look forward, therefore, to the comprehensive financial reform legislation that the Congress has pledged to present to me early next year.

Ronald Reagan

Final from this. Rec'd 8/10/87 8:45AM.

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I am signing this bill with the understanding that all of the provisions in Titles III and IV are to be viewed collectively as working to protect both depositors and the insurance fund itself. For example, provisions relating to exit fees and the moratorium on leaving the FSLIC should not be interpreted in such a way as to undermine the FSLIC's rebuilding efforts.

Unfortunately, while certain provisions of the bill should help the FSLIC sell large failing savings and loans to a variety of companies and draw needed capital to the industry, other provisions of Title I may still handicap the FSLIC's ability to find purchasers for savings and loans in financial trouble. Counterproductive restrictions should not be imposed on potential acquirers of ailing savings and loans at a time when the FSLIC needs to attract new sources of private capital to offset its limited resources. I urge the Congress to revisit this issue now that the development of comprehensive financial reform is at the top of the legislative agenda.

I am also opposed to the several extraneous, protectionist provisions that were added to this legislation. These provisions will deny consumers the services of new limited-purpose banks. They will also place significant operating restrictions on recent acquirers of limited-purpose banks, and impose a retrogressive moratorium on the ability of federal bank regulators to authorize ~~commercial banks to offer~~ new real estate, securities, and insurance products and services to consumers until March 1, 1988. My willingness to sign this bill is based in part upon its statement of congressional intent not to renew or extend the moratorium on the granting of needed new authorities for banks beyond March 1, 1988, whether or not subsequent legislation is passed by the Congress. It is also my clear understanding that this legislation will not impede the ability of federal banking

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Insert to Signing Statement

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This legislation, while accomplishing the necessary recapitalization of FSLIC without increasing the budget deficit, goes well beyond that central purpose and raises a number of issues that require further congressional attention. I look forward, therefore, to the comprehensive financial reform legislation that Congress has pledged to present to me early next year.

X revise

~~Insert: Section 505 makes a serious mistake by exempting the Federal financial regulatory agencies from Presidential oversight through the apportionment process. The apportionment authority is a critical tool for assuring that all executive branch agencies remain accountable to the President for their financial operations. I urge Congress to reconsider this significant erosion of Presidential power.~~

Document No. ______________

WHITE HOUSE STAFFING MEMORANDUM

DATE: 8/6/87 **ACTION/CONCURRENCE/COMMENT DUE BY:** 1:00 pm 8/7/87

SUBJECT: H.R. 27 -- COMPETITIVE EQUALITY BANKING ACT OF 1987

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	FITZWATER	☐	✓
BAKER	☐	✓	GRISCOM No Comment	✓	☐
DUBERSTEIN	☐	✓	HENKEL	☐	☐
MILLER - OMB See edits	☐	☐	HOBBS	☐	☐
BALL See edits	✓	☐	KING	☐	☐
BAUER OK	✓	☐	MASENG	☐	☐
CARLUCCI	☐	☐	RISQUE See comm	✓	☐
CRIBB See comm	✓	☐	RYAN	☐	☐
CRIPPEN See edits	✓	☐	SPRINKEL N/C	✓	☐
CULVAHOUSE See memo	✓	☐	TUTTLE	☐	☐
DAWSON	☐ P	✓ SS	CLERK	☐	✓
DONATELLI See Comments	✓	☐	______	☐	☐

REMARKS: Please provide your recommendation/comments on the attached enrolled bill memo and signing statement by 1:00 Friday afternoon, August 7th. Thank you.

RESPONSE:

Rhett Dawson
Ext. 2702

THE WHITE HOUSE

WASHINGTON

August 7, 1987

MEMORANDUM FOR RHETT B. DAWSON
ASSISTANT TO THE PRESIDENT FOR OPERATIONS

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 27 and Accompanying Signing Statement

As requested, this office has reviewed the enrolled bill memorandum prepared by OMB, and the accompanying draft language for inclusion in a signing statement prepared by Treasury and Justice.

We have no legal objection to the enrolled bill memorandum, but have reworked the signing statement substantially.

The signing statement language proposed by Treasury is far too long, and in general its tenor is at variance with the purpose of signing statements as legislative history. Overall, a six-page discursive, speech-like essay is inappropriate for use as a signing statement. The Treasury language contains much superfluous dicta that unnecessarily stake out policy positions in a number of areas, some of them controversial. These gratuitous remarks are irrelevant to a legislative history for legal purposes.

Much of the language is merely a reiteration of the general purposes of the bill; other statements recite broad policy goals; still others are merely self-congratulatory. The remainder of the Treasury's draft signing statement language is largely a recitation of the President's likes and dislikes among the various provisions of the bill. Wherever possible, we have whittled away this type of excess.

The Justice language has, at the request of the Office of Legal Counsel, been left out of the attached re-drafted signing statement, which as revised incorporates the essentials of the Treasury language while eliminating those other portions not appropriately covered in a signing statement.

Attachment

Received S S

1987 AUG -7 PM 3: 54

THE WHITE HOUSE

WASHINGTON

August 7, 1987

1) Show Culvahouse's fix to Chris Cox

2) does this need to be recirculated?

MEMORANDUM FOR RHETT B. DAWSON
ASSISTANT TO THE PRESIDENT FOR OPERATIONS

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COUNSEL TO THE PRESIDENT

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We have no legal objection to the enrolled bill memorandum, but have reworked the signing statement substantially.

The signing statement language proposed by Treasury is far too long, and in general its tenor is at variance with the purpose of signing statements as legislative history. Overall, a six-page discursive, speech-like essay is inappropriate for use as a signing statement. The Treasury language contains much superfluous dicta that unnecessarily stake out policy positions in a number of areas, some of them controversial. These gratuitous remarks are irrelevant to a legislative history for legal purposes.

Much of the language is merely a reiteration of the general purposes of the bill; other statements recite broad policy goals; still others are merely self-congratulatory. The remainder of the Treasury's draft signing statement language is largely a recitation of the President's likes and dislikes among the various provisions of the bill. Wherever possible, we have whittled away this type of excess.

The Justice language has, at the request of the Office of Legal Counsel, been left out of the attached re-drafted signing statement, which as revised incorporates the essentials of the Treasury language while eliminating those other portions not appropriately covered in a signing statement.

Attachment

Received S S

1987 AUG -7 PM 3:54

Rhett: I checked w/ Treasury + they agree that the moratorium is on the regulators - not the banks. You may want to check with Chris. Dan

STATEMENT BY THE PRESIDENT

I am today signing H.R. 27, the "Competitive Equality Banking Act of 1987," which recapitalizes the Federal Savings and Loan Insurance Corporation (FSLIC) and makes a number of other changes in the federal regulation of banking.

From the outset, our guiding principle in working with the Congress on this bill has been to avoid a costly taxpayer bailout--as was the case in both Ohio and Maryland--for an industry that has the wherewithal to help itself. This legislation vindicates that principle. Congress is clearly on notice that private resources are to be exhausted before any public funds are expended to assist FSLIC.

I am signing this bill with the understanding that all of the provisions in Titles III and IV are to be viewed collectively as working to protect both depositors and the insurance fund itself. For example, provisions relating to exit fees and the moratorium on leaving FSLIC should not be interpreted in such a way as to undermine FSLIC's rebuilding efforts.

Unfortunately, while certain provisions of the bill should help FSLIC sell large failing savings and loans to a variety of companies and draw needed capital to the industry, other provisions of Title I may still handicap FSLIC's ability to find purchasers for savings and loans in financial trouble. Counterproductive restrictions should not be imposed on potential acquirers of ailing savings and loans at a time when FSLIC needs to attract new sources of private capital to offset its limited resources. I urge the Congress to revisit this issue now that the development of comprehensive financial reform is at the top of the legislative agenda.

I am also opposed to the several extraneous, protectionist provisions that were added to this legislation. These provisions will deny consumers the services of new limited-purpose banks. They will also place significant operating restrictions on recent acquirers of limited-purpose banks, and impose a retrogressive moratorium on the ability of ~~commercial banks to offer~~ federal bank regulators to authorize new real estate, securities, and insurance products and services to consumers until March 1, 1988. My willingness to sign this bill is based in part upon its statement of congressional intent not to renew or extend the moratorium on the granting of needed new authorities for banks beyond March 1, 1988, whether or not subsequent legislation is passed by the Congress. It is also my clear understanding that this legislation will not impede the ability of federal banking

agencies to authorize banks and bank holding companies to conduct banking activities permitted under current law.

Certain other provisions of this legislation stand in the way of promoting competition, lowering costs, and increasing efficiencies in the delivery of financial services. While it is entirely appropriate to safeguard against conflicts of interest and to require arms-length transactions among affiliates, restrictions on the merchandising of consumer services and artificial limits on economic growth are unwarranted. These new anti-consumer and anti-competitive provisions could hold back a vital service industry at a time when competition in the international capital markets increasingly challenges U.S. financial institutions, and they should be repealed.

Section 103 of the legislation temporarily extends the 1933 Glass-Steagall Act restrictions on securities activities to state-chartered, nonmember banks for the first time, without any showing of public benefit. I note that this intrusion upon the longstanding authority of states to determine the proper activities for financial institutions under their supervision is inconsistent with other provisions of the bill, such as Section 201(e) upholding state authority to regulate the insurance activities of state-chartered banks.

This legislation, while accomplishing the necessary recapitalization of FSLIC without increasing the budget deficit, goes well beyond that central purpose and raises a number of issues that require further congressional attention. I look forward, therefore, to the comprehensive financial reform legislation that Congress has pledged to present to me early next year.

Ron—

This is ready for final. Thx!

(ceremony @ 1:45 today!)

K

August 6, 1987

Statement on Signing H.R. 27 Into Law
August 10, 1987

I am today signing H.R. 27, the "Competitive Equality Banking Act of 1987." This legislation helps to protect depositors and taxpayers by recapitalizing the Federal Savings and Loan Insurance Corporation (FSLIC), enhancing the FSLIC's ability to sell ailing savings and loan associations, and preserving the Federal Home Loan Bank Board's (FHLBB's) authority to supervise the savings and loan industry. The bill also reaffirms the sense of Congress that federally insured deposits are backed by the full faith and credit of the United States.

The safety and stability of our system of insuring the savings of small depositors is important to me, just as it is to other Americans. Federal deposit insurance has a proven history of over fifty years experience. At Congress' request, my Administration provided a responsible, efficient plan to recapitalize FSLIC last year when no one else stepped forward. I am pleased that Congress adopted most of the funding in the plan that we first proposed in May 1986. This provision is a significant step in restoring FSLIC to its full financial health.

From the outset, our guiding principle has been to avoid a costly taxpayer bailout -- as was the case in both Ohio and Maryland -- for an industry that has the wherewithal to help itself. The self-help financing mechanism not only avoids the use of taxpayer dollars, but also has been certified as budgetary neutral by the Congressional Budget Office, the General Accounting Office, and the Office of Management and Budget. In other words, it will not increase the budget deficit.

This marks the second time my Administration has been able to bolster a deposit insurance fund with a self-help program. The first was the recapitalization of the National Credit Union Share Insurance Fund by the credit union movement.

The long delay in the final passage of this bill has been unfortunate, and I had hoped that Congress would authorize the full $15 billion recapitalization plan that its own auditors, the GAO, testified was necessary. However, I am encouraged that Congress agreed to a $10.825 billion infusion of additional funds to FSLIC instead of either the $5 billion or $7.5 billion initially approved by the House of Representatives and the Senate, respectively. Congress is clearly on notice that private resources are to be exhausted before any public funds are expended to assist FSLIC.

Title IV of the bill authorizes the Federal Home Loan Bank Board to grant capital forbearance for temporarily troubled but basically well-managed and viable thrifts. These provisions are intended to maximize the long-term viability of the savings and loan industry at the lowest cost to FSLIC. The conferees' addition of a new Section 406 establishing minimum capital requirements similar to those for commercial banks is another important improvement. I fully support this provision, which provides the FHLBB with the same authority held by commercial bank regulators with respect to establishing and enforcing minimum capital levels.

After several years, savings institutions should be able to restructure their portfolios and rebuild their capital positions to meet appropriate and safe capital standards. I am pleased that the conferees agreed to sunset most of the other forbearance sections in the legislation. It is essential for the federal regulators of our depository institutions to have the proper tools to safeguard depositors' savings.

All of the provisions in Titles III and IV should be viewed collectively as working to protect both depositors and the insurance fund itself. For example, provisions relating to exit fees and the moratorium on leaving FSLIC should not be interpreted in such a way as to undermine FSLIC's rebuilding efforts.

I am also pleased that the conferees reopened the conference and further agreed to two adjustments that should help FSLIC sell large failing savings and loans to a variety of companies and draw needed capital to the industry. These changes: (1) dropped restrictions on acquisitions of failing savings and loans (over $500 million in assets) by holding companies owning limited purpose banks; and (2) removed the application of Glass-Steagall restrictions to purchasers of failing savings and loans with over $500 million in assets, with the elimination of any applicable Glass-Steagall restrictions to savings and loans in March 1988.

Unfortunately, other elements of Title I may still handicap FSLIC's ability to find purchasers for savings and loans in financial trouble. Some counterproductive restrictions are imposed on potential acquirers of ailing savings and loans at a time when FSLIC needs to attract new sources of private capital to offset its limited resources. Congress should revisit this issue soon.

I am, of course, disappointed at the several extraneous, protectionist provisions that Congress added to essential safety and soundness legislation. Consumers will now be denied the services of new limited purpose banks, recent acquirers of these special purpose banks have had significant operating restrictions

imposed on them, and a retrogressive moratorium until March 1, 1988 has been placed on the ability of commercial banks to offer new real estate, securities, and insurance products and services to consumers. Of course, this legislation does not impede the ability of federal banking agencies to authorize banks and bank holding companies to conduct banking activities permitted under current law.

The legislation includes a number of restrictions and prohibitions that stand in the way of promoting competition, lowering costs, and increasing efficiencies in the delivery of financial services. It is entirely appropriate to have safeguards against conflicts of interest and requirements for arms-length transactions among affiliates. Restrictions on the merchandising of consumer services and artificial limits on economic growth, however, are unwarranted and ought to be repealed.

Congress has not taken any steps to modernize our financial system: early-20th century rules govern late-20th century financial business practices. These new anti-consumer and anti-competitive provisions could hold back a vital service industry at a time when competition in the international capital markets increasingly challenges U.S. financial institutions.

I applaud the many Congressional statements, such as those made in Section 203, that it is the intent of Congress to conduct a comprehensive review of our outdated banking laws and to make the hard but necessary decisions on financial restructuring. I also strongly support Congress' stated intent not to renew or extend the moratorium on the granting of needed new authorities for banks beyond March 1, 1988, whether or not subsequent legislation is passed by the Congress.

My Administration welcomes Congress' pledge to pursue comprehensive reform. It is clear that outdated laws have hindered the banking industry's ability to keep pace with a rapidly evolving marketplace. Consumers and businesses pay the price for this Congressional delay because they are denied the benefits of competition. Moreover, Congressional inaction works at cross-purposes with the need to promote a safe and sound financial system characterized by institutions that are both profitable and risk diversified.

I also oppose the needless intrusion upon the longstanding authority of states to determine the proper activities for financial institutions under their supervision. Section 103, for example, temporarily extends the 1933 Glass-Steagall Act restrictions on securities activities to state-chartered, nonmember banks for the first time, without any showing of public benefit. This is inconsistent with other provisions of the bill, such as Section 201(e) which upholds state authority to regulate the insurance activities of state-chartered banks. The dual banking system in this country has served us well and ought to be preserved because of its pro-competitive benefits for consumers; it should not be preempted lightly.

Section 505 makes a serious mistake by exempting the Federal financial regulatory agencies from Presidential oversight through the apportionment process. The apportionment authority is a critical tool for protecting the integrity of the Federal Government's financial accountability.

I am pleased that Congress has included other titles such as: the emergency acquisition amendments, which enhance the ability of federal regulators to protect depositors and local communities from the disruption arising from closing financial institutions;

the credit union amendments, which include provisions strengthening the National Credit Union Administration's conservatorship authority; and the Expedited Funds Availability Act, which requires depository institutions to shorten the time period between when funds are deposited in customer's accounts and when they become available for withdrawal. Consumers and taxpayers will benefit from these provisions.

In sum, I am glad to be able to sign legislation that strengthen's the FSLIC's ability to safeguard deposits in our nations thrifts. I look forward to the comprehensive financial reform legislation that Congress has pledged to present to me early next year.

Department of Justice proposed language for inclusion in signing statement to accompany H.R. 27

This legislation establishes a Financing Corporation to assist the recapitalization of the Federal Savings and Loan Insurance Corporation. I sign this bill notwithstanding reservations that I have about the constitutionality of the manner provided for the appointment of certain of the directors of the Corporation. In selecting directors for the Corporation, the Federal Home Loan Bank Board is restricted to a list of the twelve presidents of the Federal Home Loan Banks. This imposes an impermissibly narrow restriction on the executive's constitutional duty and authority to select suitable officers of the United States.

The legislation also gives the Financing Corporation the authority to sue and be sued in its corporate capacity without specifying whether, in so doing, the Corporation must employ the litigating resources of the Department of Justice. Because of strong policy considerations favoring the centralized conduct of government litigation and the long tradition of having the Department of Justice conduct that litigation, I sign this bill with the understanding that the Financing Corporation must rely on the Department of Justice in exercising its statutory authority to sue and be sued.

Document No. ______________

WHITE HOUSE STAFFING MEMORANDUM

Received S S

DATE: 8/6/87 **ACTION/CONCURRENCE/COMMENT DUE BY:** 1:00 pm 8/7/87

1987 AUG -7 AM

SUBJECT: H.R. 27 -- COMPETITIVE EQUALITY BANKING ACT OF 1987

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	FITZWATER	☐	✓
BAKER	☐	✓	GRISCOM	✓	☐
DUBERSTEIN	☐	✓	HENKEL	☐	☐
MILLER - OMB	☐	☐	HOBBS	☐	☐
BALL	✓	☐	KING	☐	☐
BAUER	✓	☐	MASENG	☐	☐
CARLUCCI	☐	☐	RISQUE	✓	☐
CRIBB	✓	☐	RYAN	☐	☐
CRIPPEN	✓	☐	SPRINKEL	✓	☐
CULVAHOUSE	✓	☐	TUTTLE	☐	☐
DAWSON	☐ P	✓ SS	CLERK	☐	✓
DONATELLI	✓	☐	________	☐	☐

REMARKS: Please provide your recommendation/comments on the attached enrolled bill memo and signing statement by 1:00 Friday afternoon, August 7th. Thank you.

RESPONSE:

No comments.

Rhett Dawson
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Received S S

6 AUG 1987

1987 AUG -6 PM 5:56

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 27 - Competitive Equality Banking Act of 1987
Sponsors - Reps. St Germain (D) Rhode Island and Wylie (R) Ohio

Last Day for Action

Purposes

To (1) recapitalize the Federal Savings and Loan Insurance Corporation; (2) close the "non-bank bank loophole;" (3) impose a moratorium on banks offering new products and services; (4) provide Federal financial regulatory agencies with additional tools with which to assist troubled banks and thrift institutions; (5) exempt the Federal financial regulatory agencies from Presidential oversight through the apportionment process; and (6) make many other banking-related changes.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval (Signing statement attached)
Council of Economic Advisers	No objection
Department of Justice	Defers (Signing statement language attached)

Discussion

Enactment of H.R. 27 will result in an infusion of much-needed capital -- $10.825 billion -- into the Federal Savings and Loan Insurance Corporation (FSLIC), the agency that insures deposits at most of the Nation's thrift institutions (i.e., "savings and loans"). As such, it will be a major step in ensuring that FSLIC has the resources it needs in the years ahead both to assist failing (or failed) thrifts and to protect customers' deposits. An adequate recapitalization of FSLIC has been, and remains, an important policy objective of the Administration.

In May 1986, the Administration proposed a "self-help" plan to recapitalize FSLIC at $15 billion over five years without the use of taxpayers' funds. In 1987, the House passed a $5 billion FSLIC recapitalization bill, which also included objectionable statutory forbearance provisions. The Senate passed a $7.5 billion measure; however, the Senate bill included many other banking-related provisions that were not germane to the FSLIC recapitalization. The Administration supported some of the Senate provisions, vigorously opposed others, and consistently threatened a veto of both the House and Senate bills if the Administration's primary concerns -- insufficient FSLIC recapitalization, restrictive statutory forbearance requirements, anti-competitive banking provisions, and exemption from Presidential oversight/apportionment authority for the Federal banking regulatory agencies -- were not adequately addressed.

The conferees on the enrolled bill initially agreed to an $8.5 billion recapitalization of FSLIC, as well as most of the other provisions in the Senate bill. As a result of repeated warnings by Treasury Secretary Baker that the measure reported by the conference committee remained seriously deficient (and subject to a veto), the conferees agreed to reopen the conference report and to accept a compromise devised by the Secretary. On July 29th, Secretary Baker advised the conferees by letter that you had agreed to accept the compromise, and the legislation was subsequently enrolled. As enrolled, H.R. 27 still contains objectionable provisions, but that is the nature of compromise and is to be expected. As a consequence, I join the Department of the Treasury in recommending approval of the enrolled bill.

Background

Federal deposit insurance (administered by FSLIC for thrift institutions and by the Federal Deposit Insurance Corporation (FDIC) for banks) has provided a large measure of stability for the Nation's financial system. FSLIC is in urgent need of additional funds, however. For several years, the Federal Home Loan Bank Board (FHLBB), which supervises FSLIC, has delayed liquidating or finding merger partners for institutions with capital adequacy problems. Instead, FSLIC has relaxed accounting standards, engaged in implicit regulatory forbearance, and provided artificial forms of capital to troubled thrifts to keep them afloat.

Despite these steps, the number of institutions with serious problems (i.e., net worth of zero or less) has increased sharply, from 16 in 1980 to 445 in September 1986, with $112.7 billion in insured assets. The Chairman of the FHLBB has estimated that at one time the cost of resolving the thrift industry's known problems was as much as $23.5 billion, far more than FSLIC -- which finances its insurance fund through assessments on member institutions, not by direct appropriations -- had available to it (or has available to it now).

In a word, FSLIC is insolvent; the General Accounting Office has estimated that as of December 31, 1986, FSLIC had negative primary reserves of approximately $6 billion. It is widely feared that failure to provide FSLIC with adequate resources may result in a tremendous loss of consumer confidence in the thrift industry (with attendant debilitating withdrawals), a multi-billion dollar taxpayer bailout of insolvent thrifts, or the collapse of the thrift industry altogether.

H.R. 27 represents a congressional response to the Administration's proposal to provide an adequate capitalization for FSLIC. The Administration sought significantly higher funding levels and a "clean" FSLIC recapitalization bill; however, as noted previously, the Congress has passed a measure that goes far beyond recapitalization of FSLIC. A summary of the enrolled bill follows.

Description of the Enrolled Bill

H.R. 27 consists of 12 titles, each of which is summarized and, where appropriate, discussed below.

Title I - Competitive Equality Amendments of 1987

Title I would make a number of changes in the banking statutes, the most important of which by far is the closing of the "non-bank bank loophole," which has allowed certain financial institutions to avoid Federal regulation otherwise applicable to banks. Key provisions would:

- Amend the Bank Holding Company Act to redefine "bank" as an institution that either makes commercial loans and accepts demand deposits or is insured by the FDIC;

- Maintain current exclusions from the definition of "bank" for institutions insured by FSLIC and federally-chartered State thrift institutions and establish limited new exclusions (i.e., for credit unions, credit card banks, industrial banks, and similar institutions);

- "Grandfather" non-bank banks acquired before March 6, 1987;

- Impose restrictions on the activities of grandfathered non-bank banks (e.g., by limiting their growth to no more than seven percent per year and by prohibiting the cross-marketing of products between a non-bank bank and its non-bank affiliate);

- Permit any entity, including a holding company that owns a non-bank bank, to purchase a failing thrift institution with more than $500 million in assets;

- Remove the application of Glass-Steagall Act restrictions from purchasers of failing thrifts with over $500 million in assets;

- Temporarily (through March 1, 1988), and for the first time, extend Glass-Steagall restrictions on securities activities to State-chartered, non-member banks; and

- Make other amendments to promote "competitive equality" (e.g., by making the authority of national banks to lease certain property comparable to the authority of savings and loans).

The Administration strongly opposed closing the "non-bank bank loophole" because such restrictions are anti-competitive and raise serious questions of equity. Far from establishing the "level playing field" in the financial services industry that the Administration has long sought, the non-bank bank provisions of H.R. 27 are a major and unfortunate step in precisely the opposite direction. Although title I of the enrolled bill is an improvement over earlier versions (e.g., by permitting holding companies that own non-bank banks to purchase failing thrifts in certain instances), it remains objectionable.

Title II - Moratorium on Certain Non-Banking Activities

Title II would impose a moratorium on banks engaging in certain securities, insurance and real estate activities by prohibiting Federal banking agencies from authorizing activities of this kind. Other provisions would:

- Make the moratorium retroactive to March 6, 1987, and terminate it on March 1, 1988;

- Call upon the Banking Committees of the Senate and the House of Representatives to conduct a comprehensive review of the Nation's banking laws and to "make decisions on the need for financial restructuring legislation in light of today's changing financial environment . . . before the expiration of such moratorium;"

- State that it is the intent of Congress not to renew the moratorium, whether or not subsequent banking legislation is passed by the Congress; and

- Clarify that nothing in the enrolled bill is to be construed as interfering with the States' authority to permit State-chartered institutions from engaging in insurance activities.

Title II of H.R. 27 is also objectionable. As a matter of efficient functioning of financial services markets, regulated financial institutions should be permitted to engage in activities that are currently closed to them and, thus, compete

more effectively with unregulated firms engaging in similar activities without restriction. In 1983, for example, the Administration proposed comprehensive legislation that would have largely deregulated the non-banking activities of bank and thrift holding companies (e.g., by permitting insurance underwriting and brokering).

By restricting, instead of expanding, the activities in which depository institutions may permissibly engage, title II of the enrolled bill is contrary to Administration policy. I note, however, the congressional declarations of intent to address this issue more directly during the coming year and not to extend the moratorium beyond its scheduled expiration.

<u>Title III - FSLIC Recapitalization</u>

Title III of H.R. 27 would recapitalize FSLIC by providing $10.825 billion, with a $3.75 billion annual borrowing "cap." Of this amount, $.825 billion would not be additional capital for FSLIC. It would, instead, be used to offset the loss of FSLIC premium income, which was used to restore FSLIC's secondary reserve. Key provisions of title III would:

- o Require the Federal Home Loan Banks to invest in a newly-created "Financing Corporation," which would be managed by a directorate consisting of the Director of the Office of Finance of the FHLBB and two members selected by the FHLBB from among the presidents of the Federal Home Loan Banks;

- o Require the Corporation, in turn, to invest in long-term United States Treasury zero coupon bonds;

- o Require the Corporation at the same time to issue long-term bonds, the proceeds of which would be "invested" (i.e., turned over to) FSLIC and used as necessary to assist troubled thrifts;

- o Require that the Financing Corporation's transactions be timed in such a way so that the zero coupon bonds that the Corporation purchases will mature at the same time that the Corporation is obligated to pay off the principal on its long-term bonds;

- o Direct the Corporation and the FHLBB to ensure that minority-owned investment firms are afforded ample opportunity to participate in any public bond offerings;

- o Permit the Corporation to impose assessments on FSLIC-insured institutions;

- o Impose an "exit fee" on an institution that ceases to be insured by FSLIC equal to twice the institution's annual premium paid to FSLIC plus twice its FSLIC special assessment (a temporary fee currently imposed to augment FSLIC's income); and
- o Impose a one-year moratorium, from the date of enactment of H.R. 27, during which no institution may leave FSLIC voluntarily.

As noted at the outset, the FSLIC recapitalization plan contained in the enrolled bill is based in large measure on a Department of the Treasury proposal. The Administration's proposal differed in one crucial respect, however, by providing $15 billion for FSLIC. It was, and remains, our view that that amount -- not $10.825 billion ($10 billion net), as contained in title III -- is the minimum needed to see FSLIC through the difficult times ahead.

The conferees on this legislation did make a major concession with respect to the level of funding for FSLIC. In particular, as passed by the House, H.R. 27 would have provided only $5 billion for FSLIC, while the Senate would have authorized $7.5 billion. The conferees initially agreed to $8.5 billion; they later agreed to increase that figure to $10.825 billion.

The Department of Justice has provided language (attached) for inclusion in any signing statement issued in connection with the enrolled bill expressing concern about the constitutionality of the manner in which the directorate of the Financing Corporation would be appointed under title III. In particular, Justice believes that in restricting two of the three seats on the directorate to a list of the twelve presidents of the Federal Home Loan Banks, the enrolled bill would impose "an impermissibly narrow restriction on the executive's constitutional duty and authority to select suitable officers of the United States." Justice also wishes to clarify that in exercising its authority to sue and be sued, the Financing Corporation would rely on the litigating resources of the Department of Justice.

<u>Title IV - Thrift Industry Recovery Provisions</u>

Title IV would establish a regulatory forbearance program for troubled but "well managed" thrifts in areas of the country with weakened economies (e.g., because of downturns in the energy or agricultural markets). According to the conference report on H.R. 27, the purpose of this title is to ensure the health of the thrift industry at the lowest cost to FSLIC. Other key provisions of title IV would:

- o Authorize the FHLBB to purchase capital certificates from institutions participating in the forbearance program to prop up their net worth;

- Require the FHLBB to promulgate thrift accounting standards consistent with Generally Accepted Accounting Principles;

- Establish an appeals process for the timely review of grievances related to the determination of appraisals, asset classifications, loss allowances, and the like;

- Require the use of new appraisal standards for thrifts, consistent with standards employed by commercial banks;

- Provide FSLIC with the same authority held by the bank regulators with respect to minimum capital requirements;

- Terminate the regulatory forbearance program when the FSLIC Financing Corporation borrows the last of the $10.825 billion authorized by title III of the enrolled bill (which will not occur for at least two and one-half years).

The Administration has consistently opposed proposals to impose rigid statutory limitations on the ability of the regulators to supervise and resolve problems involving troubled thrift institutions. We have supported regulatory forbearance by the regulators for well-managed institutions that are able to demonstrate reasonable prospects for working out their problems. While still undesirable, title IV of H.R. 27 is an improvement over earlier versions. For example, it is not open-ended (i.e., it will "sunset" when the Financing Corporation has completed its borrowing), and FSLIC is given important new authority with respect to capital requirements.

<u>Title V - Financial Institutions Emergency Acquisitions</u>

Title V would enhance the ability of the regulatory agencies to assist troubled banks and thrifts. Title V would:

- Permit the interstate acquisition of <u>failing</u>, as well as <u>failed</u> banks with assets of at least $500 million;

- Authorize the establishment of "bridge banks" to enable the FDIC to bridge the gap between the failure of a bank and a satisfactory purchase or assumption;

- Extend title I (FDIC/FHLBB/National Credit Union Administration conservatorship authorities) of the Garn-St Germain Depository Institutions Act of 1982 permanently and title II (net worth certificates) for five years; and

- Exempt the financial institutions regulatory agencies from sequestration under the Gramm-Rudman-Hollings deficit reduction legislation.

The Administration has generally supported these provisions as a useful way for the regulators to help troubled institutions.

Title V would also exempt the regulatory agencies from Presidential apportionment authority, however, which is highly objectionable. Apportionment of funds is a critical management tool for the Executive branch in ensuring financial accountability to the President; exemptions from apportionment seriously erode the President's managerial discretion and authority. Moreover, given the significant possibility that FSLIC will require additional funds at some future date to solve the thrift problem -- and that there will likely be pressure for taxpayers and industry to contribute the second time around -- this loss of accountability is especially serious. For those reasons, I would have recommended disapproval of title V of H.R. 27, had it been presented for your consideration as a separate bill.

Title VI - Expedited Funds Availability

Title VI addresses the problem of "check holds," a practice employed by financial institutions that denies customers access to their deposited funds for specified periods after deposits are made, ostensibly to ensure that deposited items are not subsequently returned for non-sufficient funds. In particular, title VI would:

- Establish an interim funds availability schedule, effective one year after enactment of H.R. 27, that would permit check holds of two days for local checks and six days for non-local checks;
- Establish a permanent funds availability schedule, to be implemented within three years of enactment, that would permit check holds of one day for local checks and four days for non-local checks;
- Provide depository institutions with certain safeguards (e.g., through an exception from the funds availability schedule for new accounts) and make special provision for deposits at automated teller machines; and
- Require depository institutions to disclose their funds availability policies to customers.

Title VI is viewed by some as one of the most important "consumer protection" proposals to pass the Congress in many years. The Administration has in the past generally not objected to mandatory disclosure of check hold policies as a way of ensuring that consumers have the information they need to make informed choices. We have opposed mandatory check hold schedules, however. In our view, the Federal Reserve possesses adequate regulatory authority to address this issue. Moreover, we have expressed concern that any statutory check hold schedule will be unduly rigid. Title VI of H.R. 27, however, appears to have sufficient safeguards built into it -- principally adequate

lead-in time before full implementation -- to permit compliance by covered institutions on a timely basis.

Title VII - Credit Union Amendments

Title VII consists of a series of minor amendments, none of which are objectionable, that would assist the National Credit Union Administration (NCUA) in the supervision of credit unions. For example, the NCUA would be permitted to impose a conservatorship on a credit union when it determines that there has been a willful violation of a cease-and-desist order which has become final or when there is a deliberate concealment of documents from an NCUA examiner.

Title VIII - Loan Loss Amortization

Title VIII would permit the bank regulatory agencies to permit any agricultural bank they supervise to amortize any loss on any qualified agricultural loan over a seven-year period, rather than to write the loss off immediately. In order to take advantage of this liberal amortization authority, the bank would have to submit a plan (which would have to be approved) to its regulatory agency for the restoration of the institution's capital within the seven-year amortization period.

As indicated in the discussion of title IV, the Administration generally opposes regulatory forbearance proposals, of which title VIII is another example. Title VIII is an improvement in two respects on similar provisions contained in the Senate's version of H.R. 27, however. First, the loan loss amortization period is limited to seven instead of ten years. Second, qualifying banks, would, as noted above, be required to submit plans for restoring their capital in order to take advantage of the amortization provisions.

Title IX - Full Faith and Credit

Title IX of H.R. 27 states, in part, that it is the "sense of the Congress that it should reaffirm that deposits up to the statutorily prescribed amount in federally insured depository institutions are backed by the full faith and credit of the United States." This statement is essentially hortatory and restates what most people already believe (viz., that the Government will make whole all depositors in federally-insured institutions, notwithstanding the funds available to FSLIC and FDIC, at least up to the statutory maximum, currently $100,000 per account).

Title X - Government Checks

Title X would do two things. First, it would require the General Accounting Office to conduct a study of the extent to which persons who receive Treasury checks have difficulty cashing

them. Second, it would establish a system for the orderly payment of Treasury checks by:

- o Requiring that a Treasury check be negotiated within one year of its issuance, after which the check is cancelled;
- o Reducing from six years to one year the time during which the Federal Government may recover amounts from financial institutions paid on fraudulently endorsed Treasury checks; and
- o Clarify that the cancellation of a Treasury check does not extinguish the right of the payee to the underlying obligation.

The provisions of title X concerning the orderly payment of Treasury checks are based on a legislative proposal of the Department of the Treasury that is part of the Administration's Management Legislation Program for 1987.

Title XI - Interest to Certain Depositors

Title XI would require the FDIC to pay interest to holders of "yellow certificates of deposit" issued by the former Golden Pacific National Bank of New York. According to the debate in the House, depositors in this institution had to wait 16 months after the FDIC closed it before they were paid off; title XI would compensate them for the loss of the use of their funds during this period.

Title XII - Miscellaneous Provisions

Title XII would make a number of minor, miscellaneous amendments. For example, adjustable rate mortgages (including home equity loans) would be required to include a limitation on the maximum rate of interest applicable to the loan. No limitation would be imposed on how high or low such a "cap" could be, however.

Conclusion and Recommendation

The enrolled bill is consistent with the agreement reached by Secretary Baker with the conferees, which you approved. For that reason, I join the Secretary in recommending approval of H.R. 27. The Department of the Treasury has prepared a signing statement (attached) for your consideration which addresses both the positive and objectionable features of the enrolled bill.

James C. Miller III
Director

August 6, 1987

Statement on Signing H.R. 27 Into Law
August 10, 1987

I am today signing H.R. 27, the "Competitive Equality Banking Act of 1987." This legislation helps to protect depositors and taxpayers by recapitalizing the Federal Savings and Loan Insurance Corporation (FSLIC), enhancing the FSLIC's ability to sell ailing savings and loan associations, and preserving the Federal Home Loan Bank Board's (FHLBB's) authority to supervise the savings and loan industry. The bill also reaffirms the sense of Congress that federally insured deposits are backed by the full faith and credit of the United States.

The safety and stability of our system of insuring the savings of small depositors is important to me, just as it is to other Americans. Federal deposit insurance has a proven history of over fifty years experience. At Congress' request, my Administration provided a responsible, efficient plan to recapitalize FSLIC last year when no one else stepped forward. I am pleased that Congress adopted most of the funding in the plan that we first proposed in May 1986. This provision is a significant step in restoring FSLIC to its full financial health.

From the outset, our guiding principle has been to avoid a costly taxpayer bailout -- as was the case in both Ohio and Maryland -- for an industry that has the wherewithal to help itself. The self-help financing mechanism not only avoids the use of taxpayer dollars, but also has been certified as budgetary neutral by the Congressional Budget Office, the General Accounting Office, and the Office of Management and Budget. In other words, it will not increase the budget deficit.

This marks the second time my Administration has been able to bolster a deposit insurance fund with a self-help program. The first was the recapitalization of the National Credit Union Share Insurance Fund by the credit union movement.

The long delay in the final passage of this bill has been unfortunate, and I had hoped that Congress would authorize the full $15 billion recapitalization plan that its own auditors, the GAO, testified was necessary. However, I am encouraged that Congress agreed to a $10.825 billion infusion of additional funds to FSLIC instead of either the $5 billion or $7.5 billion initially approved by the House of Representatives and the Senate, respectively. Congress is clearly on notice that private resources are to be exhausted before any public funds are expended to assist FSLIC.

Title IV of the bill authorizes the Federal Home Loan Bank Board to grant capital forbearance for temporarily troubled but basically well-managed and viable thrifts. These provisions are intended to maximize the long-term viability of the savings and loan industry at the lowest cost to FSLIC. The conferees' addition of a new Section 406 establishing minimum capital requirements similar to those for commercial banks is another important improvement. I fully support this provision, which provides the FHLBB with the same authority held by commercial bank regulators with respect to establishing and enforcing minimum capital levels.

After several years, savings institutions should be able to restructure their portfolios and rebuild their capital positions to meet appropriate and safe capital standards. I am pleased that the conferees agreed to sunset most of the other forbearance sections in the legislation. It is essential for the federal regulators of our depository institutions to have the proper tools to safeguard depositors' savings.

All of the provisions in Titles III and IV should be viewed collectively as working to protect both depositors and the insurance fund itself. For example, provisions relating to exit fees and the moratorium on leaving FSLIC should not be interpreted in such a way as to undermine FSLIC's rebuilding efforts.

I am also pleased that the conferees reopened the conference and further agreed to two adjustments that should help FSLIC sell large failing savings and loans to a variety of companies and draw needed capital to the industry. These changes: (1) dropped restrictions on acquisitions of failing savings and loans (over $500 million in assets) by holding companies owning limited purpose banks; and (2) removed the application of Glass-Steagall restrictions to purchasers of failing savings and loans with over $500 million in assets, with the elimination of any applicable Glass-Steagall restrictions to savings and loans in March 1988.

Unfortunately, other elements of Title I may still handicap FSLIC's ability to find purchasers for savings and loans in financial trouble. Some counterproductive restrictions are imposed on potential acquirers of ailing savings and loans at a time when FSLIC needs to attract new sources of private capital to offset its limited resources. Congress should revisit this issue soon.

I am, of course, disappointed at the several extraneous, protectionist provisions that Congress added to essential safety and soundness legislation. Consumers will now be denied the services of new limited purpose banks, recent acquirers of these special purpose banks have had significant operating restrictions

imposed on them, and a retrogressive moratorium until March 1, 1988 has been placed on the ability of commercial banks to offer new real estate, securities, and insurance products and services to consumers. Of course, this legislation does not impede the ability of federal banking agencies to authorize banks and bank holding companies to conduct banking activities permitted under current law.

The legislation includes a number of restrictions and prohibitions that stand in the way of promoting competition, lowering costs, and increasing efficiencies in the delivery of financial services. It is entirely appropriate to have safeguards against conflicts of interest and requirements for arms-length transactions among affiliates. Restrictions on the merchandising of consumer services and artificial limits on economic growth, however, are unwarranted and ought to be repealed.

Congress has not taken any steps to modernize our financial system: early-20th century rules govern late-20th century financial business practices. These new anti-consumer and anti-competitive provisions could hold back a vital service industry at a time when competition in the international capital markets increasingly challenges U.S. financial institutions.

I applaud the many Congressional statements, such as those made in Section 203, that it is the intent of Congress to conduct a comprehensive review of our outdated banking laws and to make the hard but necessary decisions on financial restructuring. I also strongly support Congress' stated intent not to renew or extend the moratorium on the granting of needed new authorities for banks beyond March 1, 1988, whether or not subsequent legislation is passed by the Congress.

My Administration welcomes Congress' pledge to pursue comprehensive reform. It is clear that outdated laws have hindered the banking industry's ability to keep pace with a rapidly evolving marketplace. Consumers and businesses pay the price for this Congressional delay because they are denied the benefits of competition. Moreover, Congressional inaction works at cross-purposes with the need to promote a safe and sound financial system characterized by institutions that are both profitable and risk diversified.

I also oppose the needless intrusion upon the longstanding authority of states to determine the proper activities for financial institutions under their supervision. Section 103, for example, temporarily extends the 1933 Glass-Steagall Act restrictions on securities activities to state-chartered, nonmember banks for the first time, without any showing of public benefit. This is inconsistent with other provisions of the bill, such as Section 201(e) which upholds state authority to regulate the insurance activities of state-chartered banks. The dual banking system in this country has served us well and ought to be preserved because of its pro-competitive benefits for consumers; it should not be preempted lightly.

Section 505 makes a serious mistake by exempting the Federal financial regulatory agencies from Presidential oversight through the apportionment process. The apportionment authority is a critical tool for protecting the integrity of the Federal Government's financial accountability.

I am pleased that Congress has included other titles such as: the emergency acquisition amendments, which enhance the ability of federal regulators to protect depositors and local communities from the disruption arising from closing financial institutions;

the credit union amendments, which include provisions strengthening the National Credit Union Administration's conservatorship authority; and the Expedited Funds Availability Act, which requires depository institutions to shorten the time period between when funds are deposited in customer's accounts and when they become available for withdrawal. Consumers and taxpayers will benefit from these provisions.

In sum, I am glad to be able to sign legislation that strengthen's the FSLIC's ability to safeguard deposits in our nations thrifts. I look forward to the comprehensive financial reform legislation that Congress has pledged to present to me early next year.

Department of Justice proposed language for inclusion in signing statement to accompany H.R. 27

This legislation establishes a Financing Corporation to assist the recapitalization of the Federal Savings and Loan Insurance Corporation. I sign this bill notwithstanding reservations that I have about the constitutionality of the manner provided for the appointment of certain of the directors of the Corporation. In selecting directors for the Corporation, the Federal Home Loan Bank Board is restricted to a list of the twelve presidents of the Federal Home Loan Banks. This imposes an impermissibly narrow restriction on the executive's constitutional duty and authority to select suitable officers of the United States.

The legislation also gives the Financing Corporation the authority to sue and be sued in its corporate capacity without specifying whether, in so doing, the Corporation must employ the litigating resources of the Department of Justice. Because of strong policy considerations favoring the centralized conduct of government litigation and the long tradition of having the Department of Justice conduct that litigation, I sign this bill with the understanding that the Financing Corporation must rely on the Department of Justice in exercising its statutory authority to sue and be sued.

Document No. ______________________

WHITE HOUSE STAFFING MEMORANDUM

DATE: 8/6/87 **ACTION/CONCURRENCE/COMMENT DUE BY:** 1:00 pm 8/7/87

SUBJECT: H.R. 27 -- COMPETITIVE EQUALITY BANKING ACT OF 1987

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	FITZWATER	☐	✓
BAKER	☐	✓	GRISCOM	✓	☐
DUBERSTEIN	☐	✓	HENKEL	☐	☐
MILLER - OMB	☐	☐	HOBBS	☐	☐
BALL	✓	☐	KING	☐	☐
BAUER	✓	☐	MASENG	☐	☐
CARLUCCI	☐	☐	RISQUE	✓	☐
CRIBB	✓	☐	RYAN	☐	☐
CRIPPEN	✓	☐	SPRINKEL	✓	☐
CULVAHOUSE	✓	☐	TUTTLE	☐	☐
DAWSON	☐ P	✓ SS	CLERK	☐	✓
DONATELLI	✓	☐	________	☐	☐

REMARKS: Please provide your recommendation/comments on the attached enrolled bill memo and signing statement by 1:00 Friday afternoon, August 7th. Thank you.

RESPONSE:

Rhett Dawson
Ext. 2702

THE WHITE HOUSE
WASHINGTON

Received S S
1987 AUG -7 AM 11: 58

August 7, 1987

MEMORANDUM FOR RHETT DAWSON

FROM: FRANK DONATELLI

SUBJECT: ATTACHED SIGNING STATEMENT

Although I agree with the intent of the signing statement, I think it is too long and too rambling.

The essence of the statement should be:

1. Assure depositors and Wall Street that the fund is not in danger.

2. Raise the anti-competitive aspects of the bill that we oppose.

Please see suggested edit attached.

Agree — bill should be signed.

Received S S
1987 AUG -7 AM 11: 51

Document No. ____________

WHITE HOUSE STAFFING MEMORANDUM

DATE: 8/6/87 ACTION/CONCURRENCE/COMMENT DUE BY: 1:00 pm 8/7/87

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BALL	✓	☐	KING	☐	☐
BAUER	✓	☐	MASENG	☐	☐
CARLUCCI	☐	☐	RISQUE	✓	☐
CRIBB	✓	☐	RYAN	☐	☐
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August 6, 1987

Statement on Signing H.R. 27 Into Law

August 10, 1987

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